Before the
Federal Communications Commission
Washington, D.C. 20054

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| In the Matter of | ) | |
| Inquiry Concerning the Deployment of | ) | |
| Advanced Telecommunications | ) | |
| Capability to All Americans in a Reasonable | ) | GN Docket No. 04-54 |
| And Timely Fashion, and Possible Steps | ) | |
| To Accelerate Such Deployment | ) | |
| Pursuant to Section 706 of the | ) | |
| Telecommunications Act of 1996 | | |

REPLY COMMENTS OF MTCO COMMUNICATIONS, INC.

MTCO Communications, Inc. (MTCO) submits these reply comments in response to the Notice of Inquiry released on March 17, 2004 in the above-captioned matter. In the NOI, the Commission seeks information on whether "advanced telecommunications capability", or broadband, is being deployed to all Americans in a reasonable and timely manner and what actions can be taken to accelerate broadband deployment. MTCO provides competitive broadband services in central Illinois to business and residential customers primarily through UNE loops and line sharing in exchanges served by SBC and Verizon. MTCO is filing comments in this proceeding because it believes the Commission should reinstitute line sharing and feeder sub-loop requirements in order to further the advanced services goals of Section 706 of the 1996 Act.

## CONSUMERS SHOULD HAVE PLENTY OF CHOICES FOR BROADBAND

As MTCO discussed in its initial comments, the best outcome that can occur as a result of the Commission's Triennial Review Order (TRO)[1] is a broadband oligopoly, a situation that does not represent true competition because oligopolies lead to higher prices, fewer choices, and poorer service quality than what occurs in truly competitive markets. AT&T and Covad note in their initial comments that many markets currently have a broadband duopoly with broadband options limited to DSL from the ILEC and cable modem service. If the Commission does not reverse its line sharing ruling, MTCO can anticipate a duopoly occurring in some of the markets it serves in SBC's serving territory due to the inefficient network access prices that will result from the FCC's reliance on commercial negotiations that cannot be fair between a small DLEC like MTCO and large RBOCs like SBC. As Chairman Powell already recognizes, the limitation of competition to a duopoly will "decrease incentives to reduce prices, increase the risk of collusion, and inevitably result in less innovation and fewer benefits to consumers."[2]

But the real danger with the TRO is in those markets where some, or all, of the market-dominant facilities-based providers choose not to provide broadband service. In those markets, the best that can be hoped for from a consumer perspective is a monopoly – at least then *some company* is providing broadband. The markets where the TRO is most

[1] In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98 & 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003) ("Triennial Review Order" or "TRO").
[2] *Application of EchoStar Communications Corp., et al.,* Hearing Designation Order, FCC 02-284, CS No. 01-348, Statement of Chairman Powell (rel. October 18, 2002) as cited in AT&T's Comments, GN Docket No. 04-54, page 8, May 10, 2004.

likely to lead to unsatisfactory outcomes are the rural markets served by the RBOCs. In many of those markets, the incumbent cable company is the only broadband provider.[3] The Commission can facilitate broadband competition in such markets by reinstating its line sharing and feeder sub-loop requirements.

## COMMERCIAL NEGOTIATIONS AND LINE SPLITTING CANNOT EFFECTIVELY REPLACE LINE SHARING AND FEEDER SUB-LOOP REQUIREMENTS

In the TRO, the Commission abandoned line sharing and feeder sub-loop requirements. Instead of requirements, the Commission has *encouraged* ILECs and CLECs to enter into commercial negotiations for CLEC access to the ILEC's network elements. Covad, like MTCO, explained in its initial comments that it has had very little success in such commercial negotiations with RBOCs (page 10). This is because RBOCs have very little incentive to enter into negotiations with competitors for network access when they can retain higher margin by keeping competitors out. In addition, commercial negotiations are only fair if the two negotiating parties have relatively comparable leverage and resources. When a company that is small, like MTCO, tries to negotiate with a company that is large, like an RBOC, the negotiations are one-sided, if they even occur at all.[4]

In addition, for small carriers like MTCO, the Commission's reliance on commercial negotiations for line splitting results in the same problems as negotiations

[3] Although it doesn't occur where MTCO provides service, MTCO can anticipate a reverse situation where the RBOC is the only broadband provider because the cable company doesn't have facilities to serve the rural areas. In Exhibit A of its initial comments, Verizon cites a study showing that 5% of U.S. households are able to receive DSL but not cable modem service. Under either scenario, the DSL DLEC represents the only alternative to the monopoly, whether the monopoly is the cable company or the RBOC.

[4] MTCO explained in its initial comments the problems we've had negotiating with SBC and Verizon.

with RBOCs – lack of leverage and resources to adequately negotiate a decent contract. The Commission's reliance on line splitting as a substitute for line sharing also ran into legal roadblocks as a result of the D.C. Circuit's decision in USTA II, as explained by Covad in its initial comments (page 10).

**ADDITIONAL REGULATORY RELIEF FOR RBOCS IS NOT THE ANSWER**

The additional regulatory relief sought by SBC and Verizon in their initial comments is not warranted. As MTCO explained in its initial comments, the regulatory relief the Commission already gave the RBOCs in the TRO has not resulted in additional DSL deployment in rural areas served by the RBOCs with which MTCO competes. For example, Verizon still does not provide DSL service to many of the rural markets in Central Illinois despite the regulatory relief granted by the Commission in the TRO. MTCO is willing to serve those communities and could do so more efficiently and in a timely manner if the Commission reinstates its line sharing and feeder sub-loop requirements.

AT&T points out in its initial comments that recent statistics indicate that availability of DSL from RBOCs is not the problem in much of the country (page 14). Rather, the low take rates where DSL is available indicate there is a demand issue not a supply issue. MTCO echoes AT&T's belief that further RBOC deregulation is not needed for DSL take rates to increase. Rather, opening the markets to competition via line sharing and feeder sub-loop requirements will spur broadband take rates through the innovative and attractive broadband offerings that will be made by competitors like MTCO. Thus, MTCO's recommendations for the Commission to reinstate line sharing and UNE sub-loop requirements will spur broadband adoption in areas not served by the RBOCs and in areas where the RBOCs provide DSL service but face little, if any, DSL competition. If the Commission believes that a level-playing field policy dictates that cable companies be treated similarly to RBOCs, then MTCO would advocate requiring the cable companies to open their networks to competition. Such a policy is better than not requiring either the RBOCs or the cable companies to open their networks because it will lead to lower prices and more choices – exactly what consumers desire in the broadband market.

## MTCO'S RECOMMENDATIONS TO INCREASE ADVANCED SERVICES DEPLOYMENT AND TAKE RATES

It is MTCO's position that advanced services can be deployed in a more "timely fashion" if the Commission reinstates the line sharing and feeder loop requirements. MTCO has not seen the ILECs increasing broadband coverage in rural markets as a result of their reduced network unbundling requirements. Rather, the rural consumers that MTCO wants to serve have been left with a lack of choice in broadband service, thereby, resulting in fewer broadband users than would otherwise have resulted had the Commission maintained its line sharing and feeder sub-loop requirements. A more granular unbundling analysis by the Commission, or a policy that allows states to make such granular analyses and require line sharing if necessary, would result in rural customers having a choice in broadband services.

MTCO's recommendations would also help spur true competition in other markets where the best outcome that would otherwise result from the TRO is a duopoly or an oligopoly. MTCO has acknowledged in these comments that in order to achieve the goals of regulatory parity between RBOCs and cable companies, the Commission may also have to require cable companies to open their networks to competition. MTCO also provided a line sharing pricing solution in its initial comments to address the line sharing pricing concerns the Commission addressed in the TRO.[5] These two additional policies would be complementary to a renewed emphasis on requiring RBOCs to open their networks to broadband competitors. The alternative solution arrived at by the Commission in the TRO - to eliminate line sharing and prevent states from requiring line sharing – will lead to fewer broadband choices and higher prices in contrast to the goals of Section 706 of the 1996 Act.

MTCO appreciates the opportunity to provide comments in this proceeding and respectfully requests that the Commission reevaluate the impact of its TRO decision and reinstate the line sharing and feeder sub-loop requirements.

Respectfully submitted,
***Electronically filed***
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[5] Specifically, if CLECs face an "irrational cost advantage" when line sharing is priced at zero and if ILECs over-recover their loop costs when the price is higher than zero, then one option would be to price the HFPL at half the price of the full loop and require the ILEC to reimburse its voice customers for the cost of the loop recovered from the CLEC via the HFPL rate. Then, the ILEC is made whole but does not over-recover its costs, the CLEC pays for the portion of the loop it uses, and the consumer benefits by receiving advanced services at a fair rate while obtaining voice service at a lower rate. MTCO believes that the FCC would have the ability to require the framework for this type of mechanism under its UNE pricing authority while allowing the individual states to work out the specifics on the actual rates used.